



Headquarters Policy Flash

FLASH 2002-27

DATE: August 20, 2002
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **Guidelines for Physician Panel Determinations**

SUMMARY: The Office of Environment, Safety and Health (EH) issued a final rule, 67FR157, pages 52841-52857, August 14, 2002 at 10 CFR 852. It provides that a DOE contractor employee or an employee's estate or survivor can seek assistance from the DOE Office of Worker Advocacy in filing a claim with their State workers' compensation system based on an illness or death that arose out of exposure to a toxic substance during the course of employment at a DOE facility. The rule is effective September 13, 2002.

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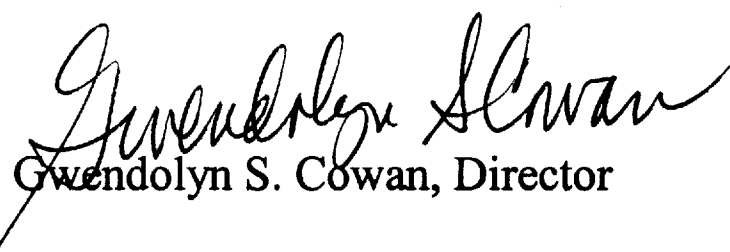
DISCUSSION: The EH rule implements Part D of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), 42 U.S.C. 7385, to provide guidance on, among other things, how an individual may submit an application for review and assistance; how the Physician Panel determines whether the illness or death of a DOE contractor employee arose out of, and in the course of employment by a DOE contractor and through exposure to a toxic substance. In addition, Section 852.19, "What is the effect of the acceptance by the Program Office of a determination by a Physician Panel in favor of an applicant?" includes two provisions that are of special interest to contracting officials.

☐ Section 852.19, paragraph (c) of the rule states that "The Program Office must advise the cognizant DOE Secretarial Officer to recommend to the Contracting Officer (CO) for a DOE contractor that, to the extent permitted by law, the CO direct the contractor not to contest an applicant's workers' compensation claim or award in any administrative or judicial forum with respect to the same health condition for which the applicant received a favorable final Physician Panel determination;"

☐ Section 852.19, paragraph (d) states "Any costs of contesting a claim or award identified in paragraph (c) of this section - that is, any costs of supporting arguments or activities with the intent or effect of delaying or defeating such a claim or award - are not allowable costs under a DOE contract." Paragraph (e) makes costs incurred as a result of a positive Physician Panel determination allowable, reimbursable contract costs to the full extent permitted under the DOE contractor's contract with DOE.

You should note that this rulemaking applies to existing, as well as, future DOE contracts and its applicability is not limited to site and facility management contracts. Since the requirements in this rulemaking flow directly from statutory provisions, a contract clause or cost principle is not necessary to apply the rulemaking to contractors."

The program point of contact for this EH rule is Loretta Young in the DOE EH Office of Worker Advocacy. She can be reached at (202) 586-2819 or by e-mail at loretta.young@eh.doe.gov.


Gwendolyn S. Cowan, Director

Attachment

cc: PPAG Members